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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,041	10/22/2003	Lynette M. Thorlakson	LYTH-1-1001	6436

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BLACK LOWE & GRAHAM, PLLC
701 FIFTH AVENUE
SUITE 4800
SEATTLE, WA 98104

EXAMINER	
WEINSTEIN, STEVEN L	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 12/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/692,041	THORLAKSON, LYNETTE M.	
	Examiner	Art Unit	
	Steven L. Weinstein	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 September 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-27,29 and 30* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-27,29 and 30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 12/6/05
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

It is first noted that claim 28 uses the status identifier "withdrawn". This appears to be in error, since the word "withdrawn" is reserved for claims that have been non-elected after a restriction requirement. It appears that the only appropriate status identifier in the present case should have been "cancelled". To expedite prosecution, applicant's intent is being construed as a cancellation of claim 28. If after reviewing this Office action, applicant decides to continue prosecution of this application, then the status identifier for claim 28 is required to be corrected.

Claims 1-20 are rejected under 35USC112,1st paragraph for containing New Matter. Claims 1 and 12 now recite animal treat "mix". The specification appears to be silent relative to the word "mix". The word itself can have several different connotations. Therefore, the word is not supported by the specification, as originally filed.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-3, 5, 11-14, 16, 21-23, 27, 29, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keane (5/2002, http://www.looksmart.com/) in view of Nash (11/01/2002, http://www.baselinemag.com), Seattle Times (08/31/2002, page E4), New York Times (12/15/2002, page 80) and applicant's admission of the prior art, further in view of Robinson (4,934,525), Bezek et al (6,596,328), Times Union (11/29/1989, page C1), Tilman (6,467,956), Shadrach (US 2004/0099719), and Yuguchi (6,844,015) for the reasons fully and clearly detailed in the Office action mailed 4/27/05.

Claims 1 and 12 now positively recite that the cups contain the animal treats. As was discussed in detail in the last Office action, the art taken as a whole teaches it was conventional to package snacks in cups, that it was conventional to package products other than coffee (e.g. candy) in a coffee cup, and that it was conventional to package dog food in cups that could also be used for food intended for humans. This evidence, taken with the fact that applicant's particular cup is conventional by applicant's own admission of the prior art, would fairly lead one to package any conventional product in any conventional container structure capable of retaining the product; including conventional pet treats in a conventional paper cup with a conventional plastic lid, that could also be used to contain coffee. That is, once it was known to package conventional foods in conventional cups, as is taught by Keane, and the art taken as a whole, to modify the combination and substitute one conventional food for another conventional food and one conventional container for another conventional container for its art recognized and applicant's intended function is seen to have been obvious. The claims also now recite that the container is one of three volume sizes. The particular size of container one chooses is seen to have been an obvious matter of choice based on obvious considerations as to the serving size, storage size considerations, pricing, etc. It is not seen that patentability can be predicated on the size of a container. In any case, as evidenced by applicant's admission of the prior art, applicant is not the inventor of the cup, let alone its size. See, for example, in this regard, page 2, lines 22 and 23 of the specification -"normal size". Finally, note that applicant's admission of the prior art

confirms that paper cups and plastic lids are conventional - page 2, lines 22 plus, "standard" paper cup and plastic lid.

Claims 4,15 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Shelby ('310) for the reasons given in the Office action mailed 4/27/05.

Claims 6-10, 17-20, 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Vangertruyden ('363), Nugent ('598) and Barnes et al ('546) for the reasons given in the Office action mailed 4/27/05.

All of the remarks filed 9/29/05 have been fully and carefully considered but are not found to be convincing. On page 7 of the amendment, the references are argued separately as if they were applied alone, in a vacuum. The references are not applied singly under 35USC102, anticipation, but rather are combined under 35USC103, obviousness. The last Office action clearly and specifically details how each of the references is being applied. It is urged that the references do not teach the specific cup size. This urging has been addressed above. It is urged that the references do not teach the combination of cup size, paper coffee cups and animal treats. The rejections are based on 35USC103, obviousness. The claims must be novel and unobvious. For the reasons given in the last Office action and above, whereas the claims meet novelty, the invention recited therein would have been obvious in view of the art taken as a whole. There is nothing magic in the recitation of a paper coffee cup. The cup is a container

and its function to contain some product is no different than any other container, or cup specifically, when it comes to the function of containment.

To summarize, applicant has combined a conventional container with a conventional product, uses the container for nothing more than its function as a container, and achieves no new or unexpected result therefrom.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday from 7:00AM to 2:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Steve Weinstein

STEVE WEINSTEIN 1761
PRIMARY EXAMINER

12/6/05